

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Policy for Licensing Domestic Satellite Earth)
Stations in the Bush Communities of Alaska) IB Docket No. 02-30
) RM No. 7246
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REPORT AND ORDER

Adopted: August 6, 2003

Released: August 12, 2003

By the Commission:

I. INTRODUCTION

1. By this action, we discontinue the Alaska Bush Earth Station Policy (Alaska Bush Policy), which precludes installing or operating more than one satellite earth station in any Alaskan Bush community¹ for competitive carriage of interstate Message Telephone Service (MTS) communications, *i.e.*, ordinary interstate, interexchange toll telephone calls. By discontinuing the Alaska Bush Policy, we are eliminating a long-standing exception to the Commission’s general policy favoring open entry for facilities-based competition in the provision of interstate MTS telecommunications services. We believe that allowing facilities-based competition of interstate MTS in Alaska Bush communities will encourage improvement in the quality of service available in those communities, promote more efficient delivery of service, and reduce incentives for overcharging for use of these facilities.

II. BACKGROUND

2. A complete history of the Alaska Bush Policy may be found in the Notice of Proposed Rulemaking in this proceeding and will not be repeated here.² Briefly, the policy of

¹ Alaska Bush communities, as defined for purposes of the policy, are rural Alaskan communities of less than 1,000 residents that are isolated from larger cities by rugged terrain and harsh weather conditions. *See, e.g., Policies Governing the Ownership and Operation of Domestic Satellite Earth Stations in the Bush Communities in Alaska*, Tentative Decision, 92 FCC 2d 736 (1982) (*Tentative Decision*) at n.1 and ¶61.

² *See Policy for Licensing Domestic Satellite Earth Stations in the Bush Communities of Alaska*, Notice of

licensing only one satellite earth station in each Alaska Bush community to provide conventional interexchange MTS was formulated in the Commission's *Tentative Decision* in 1982.³ Pursuant to the Alaska Bush Policy, Alascom, Inc. (Alascom), now a wholly owned subsidiary of AT&T Corp., alone or in partnership with United Utilities, Inc. (United), a local exchange carrier, was authorized to construct and operate the earth station facilities in the Alaska Bush communities and to provide MTS service. The Alaska Bush Policy was based on the principle that duplicative proposals for facilities in the Alaska Bush communities are mutually exclusive because one facility could provide all the services provided by either party, and there was no public interest benefit in the construction of duplicate MTS facilities.

3. When the Commission formally adopted the Alaska Bush Policy in 1984,⁴ no MTS competition, in any form, had been authorized in Alaska. In 1990, however, the Alaska legislature opened most of the State's telecommunications markets to facilities-based competition, but not the Alaska Bush communities.⁵ Five years later the Regulatory Commission of Alaska (RCA)⁶ granted General Communication, Inc. (GCI), an Alaskan facilities-based interstate long distance carrier, a temporary waiver, allowing it to install earth stations in 50 Alaska Bush communities and to provide intrastate MTS in competition with Alascom on an experimental basis. The following year the International Bureau (Bureau) granted GCI's request to waive the Alaska Bush Policy in the same 50 Alaska Bush communities, thus allowing GCI to use its earth stations to provide both interstate and intrastate MTS in these 50 communities.⁷ The Bureau concluded that the potential public interest benefits of providing the 50 Alaska Bush communities with increased service options, improved quality, and lower rates outweighed a rigid adherence to a policy that does not provide for technological

Proposed Rulemaking, 17 FCC Rcd 2979 (2002) (*NPRM*) at 2980-84.

³ Prior to 1969, the United States Air Force provided communications within Alaska, via the Alaska Communication System (ASC). Alascom purchased the ASC in 1970.

⁴ See *Policies Governing the Ownership and Operation of Domestic Satellite Earth Stations in the Bush Communities in Alaska*, Final Decision, 96 FCC 2d 522 (1984) (*Final Decision*).

⁵ See Act of June 7, 1990, 1990 Alaska Sess. Laws Ch. 93; see also *Regulations Governing the Market Structure for Interstate Interexchange Telecommunications Services*, 10 APUC 407 (1990).

⁶ The agency was then known as the Alaska Public Utilities Commission.

⁷ See *Petition of General Communication, Inc. for a Partial Waiver of the Bush Earth Station Policy*, Memorandum Opinion and Order, 11 FCC Rcd 2535 (Int'l Bur. 1996) (GCI Waiver). The Bureau granted GCI a waiver to construct and operate no more than 50 earth station sites for a period of time to run concurrently with the Alaska Public Utilities Commission's two year waiver. *Id.* at 2537. Thereafter, GCI has continued operation of the earth stations in these Alaska Bush communities pursuant to Special Temporary Authority (STA). See e.g., Letter from Kathy L. Shobert, Director, Federal Affairs, GCI Communications Corp. to FCC, Common Carrier Domestic Earth Stations, dated August 3, 1998; see also Letter from Tina M. Pidgeon, CGI Communications Corp. to FCC, International Bureau – Earth Stations, dated July 26, 2002.

advancements and market changes.⁸

4. In 2000, the RCA found that allowing GCI to construct duplicate earth stations in the 50 Alaska Bush communities had, in fact, led to a more efficient use of available satellite resources, resulting in consumers benefiting from lower retail rates and improved service quality. In view of its finding, the RCA eliminated Alaska's restrictions on facilities-based MTS competition in the Alaskan Bush.⁹ Thus, the FCC's Bush Policy remains the only significant regulatory barrier to facilities-based MTS competition throughout Alaska.

5. On February 15, 2002, the Commission released the *NPRM* in this proceeding, proposing to discontinue the Alaska Bush Policy. The Commission noted in the *NPRM* that the Alaska Bush Policy is based on the proposition that applications for "duplicative" Alaska Bush earth stations are mutually exclusive. It also noted that the Alaska Bush Policy was formulated prior to the advent of MTS competition, and is based on a regulatory policy designed to prevent non-dominant carriers from investing in facilities at their own expense to compete with a carrier with an established facilities monopoly. Finally, the Commission pointed to the fact that the RCA has removed the parallel intrastate entry barrier. Consequently, the Commission tentatively concluded that the time has arrived to remove the barrier against facilities-based interstate MTS in the Alaska Bush as well. The Commission also tentatively concluded that facilities-based competition in the provision of interstate MTS in Alaska Bush communities will result in public interest benefits comparable to those that were realized in the 50 Alaska Bush communities in which GCI has been allowed to provide competitive MTS service. Accordingly, the Commission invited comment on its proposal to abolish the Alaska Bush Policy.

III. DISCUSSION

6. Three parties, Alascom and AT&T, GCI, and the RCA, have filed comments in response to the *NPRM*. All three commenters support the Commission's proposal to eliminate its prohibition on the installation or operation of more than one satellite earth station in any Alaska Bush community for the competitive carriage of interstate MTS.

7. The RCA submits that since 1995, when both the RCA and the FCC waived applicable Alaska Bush facility restrictions to allow GCI to construct duplicate earth stations in Bush communities, consumers have benefited from lower retail rates and improved service quality. According to the RCA, these benefits are what ultimately motivated it to eliminate the State's restrictions on facilities-based intrastate MTS competition in Bush Alaska in 2000. The RCA states that elimination of the FCC's Alaska Bush Policy will remove the final regulatory barrier to facilities-based interexchange competition throughout Alaska, and thus, it fully

⁸ *Id.* at 2537.

⁹ *See Consideration of the Reform of Intrastate Interexchange Telecommunications Market Structure and Regulations in Alaska*, Docket R-98-1, Order No. 6 (RCA, Nov. 20, 2000).

supports the Commission's proposal set forth in the *NPRM*. Moreover, the RCA says that it shares the Commission's belief that facilities-based MTS competition in Alaska Bush communities will produce public interest benefits and will also establish an incentive for Alascom to operate more efficiently.¹⁰

8. The same arguments advanced by the RCA are made by GCI, which provides specific examples of how competition between it and Alascom has benefited the Alaska Bush communities with improved telecommunication efficiency and new service offerings. According to GCI, the first and perhaps most significant technological improvement was the implementation of its Demand Assigned Multiple Access (DAMA) satellite transmission system, which allows bandwidth to be used more efficiently. Before the introduction of DAMA, GCI explains that all channels were assigned exclusively to a certain community and could not be used for other communities.¹¹ GCI adds that DAMA also eliminates the need for a "double hop" configuration. Double hop refers to a call that requires two satellite hops to complete. The earth station technology that was used before DAMA was introduced required all traffic to or from an Alaska Bush location to first be transmitted to a satellite, then to Anchorage, Fairbanks or Juneau for switching, even for calls not destined for those markets, and then transmitted a second time to a satellite for transmission to the call's final destination. This resulted in signal delay and frequency echo, rendering facsimile transmission unreliable and data transmission impossible.¹² Finally, GCI states that the success it has achieved with DAMA has caused Alascom to upgrade many of its Alaska Bush earth station facilities to digital DAMA technology.¹³

9. On the service side of the equation, GCI points out that greater facilities efficiency has enabled telemedicine to be offered in Alaska Bush communities. In those Alaska Bush communities where telemedicine is now available, GCI states that a village medical practitioner is able to provide a doctor in a regional center with detailed information regarding a patient's symptoms, medical history, and images, *e.g.*, of skin problems, trauma, lacerations, to aid the doctor in formulating a diagnoses of the patient's condition and in determining whether the patient should be flown to Anchorage, at a cost that sometimes exceeds \$20,000. Accordingly, unnecessary expenses can be avoided. More importantly, however, GCI states that satellite-provided telemedicine capabilities enable a doctor in a regional center to guide a local medical practitioner to provide both routine and emergency medical care.¹⁴ GCI further notes that it has also provided reliable Internet connection for schools and libraries in nearly all of the Alaska

¹⁰ See RCA Comments at 2-5.

¹¹ See GCI Comments at 5-6.

¹² *Id.* at 6-7.

¹³ *Id.* at 7.

¹⁴ *Id.* at 8-9.

Bush communities it serves.¹⁵

10. Along with improved service and service offerings, GCI says all customers in Alaska have benefited significantly from decreased long-distance rates since it entered the market. Due to the general rate reductions, GCI says many Bush customers now have an incentive to abandon high “basic” rates and opt for less-expensive calling plans that save them money. Notwithstanding these improvements, GCI contends that lifting the Alaska Bush Policy completely will result in the Alaska Bush realizing the full benefits of competition in both intrastate and interstate MTS service.¹⁶

11. Alascom and AT&T also support repeal of the Alaska Bush Policy. Alascom and AT&T contend, however, that other deregulatory actions, which they requested in a March 10, 2000 Petition, “are indivisible aspects of the [Alaska]Bush Policy” and thus, must be acted upon simultaneously.¹⁷ In the March 10, 2000 Petition, Alascom and AT&T requested, among other relief, that the Commission eliminate structural separation and tariffing requirements under which Alascom has been providing certain carrier-to-carrier services in Alaska.¹⁸ In addition, on January 7, 2003, Alascom filed a petition for waiver from the requirement that it annually file revised cost-based rates for these carrier-to-carrier services.¹⁹ Alascom and AT&T point out in these petitions that Alascom now must disaggregate all of its service costs within Alaska by location, resulting in more than 900 separate cost points. Alascom and AT&T contend that no other carrier has ever been forced to provide a service based upon stand-alone location-specific costs. The present tariff requirements, they submit, impose unwarranted competitive regulatory burdens that are preventing Alascom from providing its customers with improved service.²⁰ These petitions are under consideration in separate dockets.²¹

¹⁵ *Id.* at 9.

¹⁶ *Id.* at 9-11.

¹⁷ Alascom and AT&T Comments at 1. *See also* Public Notice, *Pleading Cycle Established for Comments on AT&T and Alascom Petition for Structural and Other Regulatory Relief*, DA 00-603, CC Docket No. 00-46, March 17, 2000.

¹⁸ The services are the transport and switching services by which Alascom transmits interexchange carriers’ traffic to and from Alascom’s points of interconnection with Alaska local exchange carriers in both Alaska Bush and non-Bush communities. *See Integration of Rates and Services for Provision of Communications by Authorized Common Carriers between the Contiguous States and Alaska, Hawaii, Puerto Rico and the Virgin Islands*, Final Recommended Decision, 9 FCC Rcd 2197, 2204 (Joint Board 1993) (*FRD*), *adopted and modified*, Memorandum Opinion and Order, 9 FCC Rcd 3023 (1994) (*Alaska Market Order*). Alascom provides these services under its Tariff FCC No. 11.

¹⁹ *See* Public Notice, *Pleading Cycle Established for Alascom, Inc., Petition for Waiver of the Commission’s Rules Regarding Its Annual Tariff FCC No. 11*, WC Docket No. 03-18, DA 03-169 (Jan. 21, 2003).

²⁰ Alascom and AT&T Comments at 3.

12. The need for the Alaska Bush Policy is over. As was noted in the *NPRM*, the “Alaska Bush Policy is an isolated exception to the Commission’s interstate MTS open-entry policy.”²² It was based on the assumption that authorizing more than one earth station in a Alaska Bush community would be duplicative and thus needlessly expensive, since a single earth station is sufficient to accommodate all the calls placed to or from the community. The GCI experience has demonstrated that the concern underlying the Alaska Bush Policy is no longer warranted. GCI has provided us with what we believe to be a preview of the public interest benefits that will be realized by allowing open-entry, facilities-based competition in the provision of interstate MTS in Alaska Bush communities. We believe that by eliminating the Alaska Bush Policy, citizens of the Alaska Bush communities will benefit from improved telecommunications services provided by both Alascom and its competitors at lower prices. For these reasons, we eliminate the Alaska Bush Policy.

13. Finally, we note that this proceeding was established for the limited purpose of considering the elimination of the Alaska Bush Policy. Consequently, we decline to address at this time other potential changes to our regulatory requirements for Alaska. In particular, because, as indicated above, eliminating the Alaska Bush Policy would promote important public interests, we decline to defer this deregulatory step pending our consideration of Alascom’s and AT&T’s March 2000 and January 2003 petitions.

IV. CONCLUSION

14. For the reasons set forth on the record in this proceeding, we abolish the Alaska Bush Policy, thus eliminating the restriction on facilities-based competition in the Alaska Bush.

V. PROCEDURAL MATTERS

15. *Final Regulatory Flexibility Analysis*. The Final Regulatory Flexibility Analysis for this Report and Order, pursuant to the Regulatory Flexibility Act, 5 U.S.C. § 604, is contained in the Appendix.

VI. ORDERING CLAUSES

16. Accordingly, IT IS ORDERED that the Alaska Bush Earth Station Policy, formally adopted by the Commission in *Policies Governing the Ownership and Operation of Domestic Satellite Earth Stations in the Bush Communities in Alaska*, Final Decision, 96 FCC 2d 522 (1984) IS DISCONTINUED.

²¹ See *supra* notes 17 and 19 and accompanying text.

²² *NPRM*, 17 FCC Rcd at 2979.

17. IT IS FURTHER ORDERED that the Commission's Consumer and Government Bureau, Reference Information Center, *SHALL SEND* a copy of this *Report and Order*, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX

FINAL REGULATORY FLEXIBILITY CERTIFICATION

18. The Regulatory Flexibility Act of 1980, as amended (RFA)²³ requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that “the rule will not have a significant economic impact on a substantial number of small entities.”²⁴ The RFA generally defines “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”²⁵ In addition, the term “small business” has the same meaning as “small business concern” under the Small Business Act.²⁶ A small business concern is one that: (1) is independently owned and operated; (2) is not dominant in its field or operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).²⁷

19. The Report and Order repeals a regulatory policy that prevented companies from obtaining licenses to operate earth stations in rural Alaska that would carry telephone calls between users in certain Alaskan communities and users in other states if such service was already available in those communities via facilities provided by an established carrier. Because the Report and Order does not impose any regulatory burden, we certify that it will not have a significant economic impact on a substantial number of small businesses. The Commission will send a copy of the Report and Order, including a copy of this final certification, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996.²⁸ In addition, the Report and Order and this final certification will be sent to the Chief Counsel for Advocacy of the SBA and will be published in the Federal Register.

²³ See 5 U.S.C. § 603. The FRA, *see* 5 U.S.C. § 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

²⁴ 5 U.S.C. § 605(b).

²⁵ 5 U.S.C. § 605(6).

²⁶ 5 U.S.C. § 605(3) (incorporating by reference the definition of “small business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after the opportunity for public comment, establishes one or more definitions of such term that are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register

²⁷ Small Business Act, 15 U.S.C. § 632 (1996).

²⁸ 5 U.S.C. § 801(a)(1)(A).